IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

SA.No. 563 of 1994(A)

AS.72/1989 of ADDL.SUB COURT, ALAPPUZHA
OS.699/1985 of PRINCIPAL MUNSIFF COURT, ALAPPUZHA
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APPELLANTS/RESPONDENTS/PLAINTIFFS:
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1. P.V.BHAIRAVAN, RESIDING IN VANCHIPARAMBPU VEEDU, PALLATHURUTHI WARD, ALAPPUZHA, HINDU RELIGION, AGRICULTURIST, AGED 59

(1ST PLAINTIFF IN OS & 1ST RESPONDENT IN AS)

2. KUMARI WIFE OF BHAIRAVAN, RESIDING IN VANCHIPARAMBPU VEEDU, PALLATHURUTHI WARD, ALAPPUZHA, HOUSE WIFE, AGED 47

(2ND PLAINTIFF IN OS & 2ND RESPONDENT IN AS)

BY ADV. SRI.R.HARIKRISHNAN

RESPONDENTS/APPELLANTS/DEFENDANTS:
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1. KARUVELIL PADASEKHARA COMMITTEE, PALLATHURUTHI, ALAPPUZHA, REP. BY ITS CONVENOR

(1ST DEFENDANT IN OS 699/85 OF MUNSIFF COURT, ALAPPUZHA)

2. T.P.SADANANDAN, RESIDING IN THURUTHIL VEEDU, PALLATHURUTHI, ALAPPUZHA.

(2ND DEFENDANT IN OS 699/85 ABOVE MENTIONED)

BY ADV. SMT.I.SHEELADEVI

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 20/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

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S.A. NO.563 OF 1994

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Dated this the 20th day of August, 2007

JUDGMENT

Plaintiffs in O.S.699/1985 on the file of Munsiff Court, Alappuzha are the appellants. Defendants are the respondents. Appellants instituted the suit seeking a decree for Rs.10,000/- as damages. The suit was filed against first respondent Karuvelly Padasekhara Committee and second respondent its convenor contending that item No.1 belongs to first appellant and item No.2 nilam belongs to second appellant and on behalf of second appellant first appellant is in possession of item No.2 nilam and plaint item No.1 bund which is situated north south and almost in the middle portion of the bund there exists two plots belonging to C.S.I.Church and in the northern portion of the chira one Vidhyadharan resides and the bund further extends east-wards and the eastern portion of the bund originally belonged to one

Menon which was purchased by appellants in 1970 and in the bund appellants planted plantain, cocoanut saplings etc. and on the eastern side of the bund Karuveli padasekharam is situated and on the western side Kompankuzhi Padasekharam is situated and in connection with the cultivation of karuveli padasekharam during 1985-1986 a meeting of the cultivators was convened on 12.5.1985 and appellants presented a written request requiring to strengthen the bund in plaint item No.1 and the request was made because if Karuveli padasekharam alone is cultivated there is every possibility of bund being damaged by flow of water and the entire cultivation would be destroyed and still the bund was not strengthened and as a result in July 1985 due to the unprecedented flood, water level in Kompankuzhi padasekharam started to rise to a dangerous position and respondents being convinced that there is every possibility of the bund being damaged and if the bund is damaged, the entire cultivation in the padasekharam will also be

damaged, cut down some cadjans from the cocoanut trees of the appellants that stood in the chira and tried to strengthen the bund and removed soil from item No.2 of the plaint schedule property and to prevent further flow of water 160 plantains and two cocoanut saplings were cut and used to obstruct the flow of water and appellants sustained damages of Rs.6,500/- being the value of the plantains and cocoanut saplings and total loss of Rs.10,000/-. Respondents in the written statement denied the allegations and contended that there was unprecedented flood during 1985 and the chira happened to be destroyed and the cocoanut saplings planted which were planted, on the chira were likely to be destroyed and agricultural Department of the State considering the damages sustained to the cultivators in the padasekharams due to the flood havoc, compensation was sanctioned and distributed to individual cultivators on getting applications from them and appellants also received compensation and it was suppressed in the

plaint. It was contended that general body of cultivators of Karuveli Padasekharam had never convened on 12.5.1985 as alleged and instead it was convened on 7.4.1985, 5.5.1985 and 21.7.1985 and there was no representation to strengthen the bund as claimed in the plaint and during 1985 the the second crop raised, general body of the cultivators was convened and decision was taken and the decision to strengthen the ring bund is equally applicable to plaint No.1 also and no damage was caused at the instance of respondents and therefore appellants are not entitled to the decree sought for.

2. Learned Munsiff on the evidence of Pws.1 to 5 and Dws.1 to 3, Exts.A1 to A5(a), B1 to B7 and C1 and C2 granted a decree directing respondents to pay damages of Rs.4236/-. Defendants challenged the decree and judgment before Additional Sub Court, Alappuzha in A.S.71/1989. Learned Sub Judge on reappreciation of evidence found that Padasekharam Committee has no legal duty to

maintain the bund and therefore they are not liable to pay any damages. It was also found that Padasekharam Committee is an unregistered society and appellants are not entitled to the decree sought for. On merits also first appellate court on reappreciating the evidence found that the damages were caused only due to unprecedented flood and as is clear from the evidence, case of appellants that plantains were removed for strengthening the bund is not correct in view of the admission in Ext.A3 that plantains and cocoanut saplings were damaged by flood and in such circumstance, appellants are not entitled to the decree sought for. Second appeal is filed challenging the dismissal of the appeal by the first appellate court. The second appeal was admitted formulating the following substantial questions of law.

1) When defendants have not filed any objections to the commission report, was it justifiable on the part of the court to discard the

evidence.

2) When the court finds that proper parties are not impleaded in the suit is not just and proper to remand the suit to the trial court to enable plaintiffs to implead the necessary parties.

3) When first appellate court differs with the findings recorded by the trial court on the basis of the evidence, is it not proper for the first appellate court to discuss the entire evidence and assess its probative value.

3. Learned counsel appearing for appellants and respondents were heard.

4. Plaint schedule properties are in Kuttanad. In a padasekharam there are numerous cultivators. For proper cultivation, cultivators of the padasekharam used to meet and elect a Committee by name Padasekharam Committee. First respondent is the Padasekharam Committee and second respondent its convenor during 1985. It was admitted by appellants that there was an unprecedented flood

during monsoon in 1985 and as a result heavy damage was caused to the property and cultivation. The case of appellants was that respondents due to the failure to strengthen the bund in time, caused the loss and they are liable to pay the damages. First appellate court found that the suit is instituted against an unregistered and non proprietory club and so it is not maintainable and for that sole reason appellants are not entitled to the decree sought for. The legal position cannot be challenged. The argument of the learned counsel appearing for appellants is that when first appellate court is interfering with the decree granted by the trial court on the ground that suit as instituted against respondents is not maintainable, an opportunity should have been granted to implead the necessary parties. This aspect was also considered by the first appellate court. Relying on the Full Bench decision of this court in Athenacious v. Bassaelios Catholicas (1957 KLT 63) it was held that sanction or permission

contemplated under Order 1 Rule 8 can be given by the court for impleading necessary parties, on the facts and circumstances of the case it is not necessary. That finding of the first appellate court is also correct. On the facts the substantial question as formulated is not involved in the appeal.

5. First appellate court on the evidence found that first respondent Committee has no duty or obligation to maintain the bund and therefore the suit as such against the respondents for non-maintenance of the bund and causing damages will not lie. That fact also cannot be disputed. Though it was contended that damage was caused by cutting plantains and cocoanut saplings for the purpose of strengthening the bund, first appellate court relying on Ext.A3 copy of the notice sent by appellants themselves found that the case was not that plantains were cut for the strengthening the bund but they were damaged due to the flood. It is for that reason first appellate court held that

appellants are not entitled to claim damages for the damages caused to plantains or cocoanut saplings as they were not damaged by the Padasekharam Committee. The further damage claimed was for the removal of the soil. There was no evidence to prove that soil was removed by the second respondent or the first respondent Committee. It is in such circumstance, first appellate court held that appellants are not entitled to the damages and dismissed the suit. I do not find any merit in the appeal. The appeal is dismissed.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

S.A..NO. 622/94

JUDGMENT

3RD AUGUST, 2007